

Editor's note: Erratum issued April 23, 1981 -- See 53 IBLA 4A below.

JAMES B. PAULEY

IBLA 81-235

Decided February 26, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting for purposes of recordation the notices of location for the Valley View and Valley View Nos. I through V mining claims (N MC 178926 and N MC 175186-175190).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

The Department revised and amended 43 CFR 3833.0-5(i) by publication in the Federal Register at 44 FR 9722 (Feb. 14, 1979). The purpose of the revision was to avoid the necessity for a claimant to delay filing with BLM until the copy filed with the local recorder became available, by providing that the claimant could file with BLM a reproduction or duplicate of the original instrument "which was or will be filed in the local jurisdiction." Thus,

a claimant may not excuse the tardy filing of his mining claim location notice on the ground that the original was not promptly returned from the county recorder's office.

3. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

4. Agency -- Application and Entries: Filing -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation -- Mistakes

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

APPEARANCES: James B. Pauley, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James B. Pauley has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated December 9, 1980, which declared appellant's mining claims abandoned and void. 1/

The claims in question were located on August 26, 1980. BLM received a copy of the notices of location on December 1, 1980, 97 days after the date of location. After receiving the documents, BLM declared the claims void, rejected the filing, and returned the documents to appellant.

On December 22, 1980, appellant filed a timely notice of appeal, stating that he filed the certificates of location with the Nye County recorder's office on October 30, 1980, in accordance with the mining laws of 1872. Appellant further asserts that the certificates of location were not returned by the Nye County recorder until November 22, 1980. Appellant finally asserts that the delays involved in filing his

1/ Appellant's mining claims are the Valley View and the Valley View I, II, III, IV, and V.

certificates of location with BLM were delays caused by the Nye County recorder and the U.S. Postal Service, for which he should not be held responsible.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. Faith C. Hartman, 44 IBLA 310 (1979).

[2] The Department revised and amended 43 CFR 3833.0-5(i) by publication in the Federal Register at 44 FR 9722 (Feb. 14, 1979). The purpose of the revision was to avoid the necessity for a claimant to delay filing with BLM until the copy filed with the local recorder became available, by providing that the claimant could file with BLM a reproduction or duplicate of the original instrument "which was or will be filed in the local jurisdiction." Thus, a claimant may not excuse the tardy filing of his mining claim location notice on the ground that the original was not promptly returned from the county recorder's office. See Wilma Hartley, 48 IBLA 83 (1980); James E. Strong, 45 IBLA 386 (1980).

[3] Regulation 43 CFR 3833.4(a) provides: "(a) The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void." That appellant filed notices of location with the Nye County recorder's office in accordance with the general mining laws of 1872 can provide him no relief here. The mandate of the statute applicable to Federal lands is clear. Where the owner of an unpatented mining claim located after October 21, 1976, fails to file a location notice with BLM within 90 days after the date of location, his claim is properly deemed conclusively to be abandoned and to be null and void. Beryl Rhodes, 46 IBLA 287 (1980). Appellant has not denied that he failed to timely submit the required information. The Board has decided in numerous cases that the statute permits no exception to the requirement of timely filing of the notice of location with BLM. See Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining v. Bureau of Land Management, Civ. No. 78-46-M (D. Mont. June 19, 1979). All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Fred S. Ghelarducci, 41 IBLA 277 (1979); John A. Steele, Jr., 41 IBLA 49 (1979); Juan Munoz, 40 IBLA 74 (1979).

[4] Appellant also alludes to the 6-day delay attributable to the Postal Service. Although more expeditious handling of the mail would still not have resulted in a timely filing of the location notices with BLM, we should point out that the claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of delay or nondelivery by that method. G. R. Marquardson, 49 IBLA 114 (1980); Johnnie Finnegan, 48 IBLA 79 (1980); Everette Yount, 46 IBLA 74 (1980). Moreover, we note that appellant did not file with the Nye County recorder's office until more than two months after the claims were located.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

April 23, 1981

53 IBLA 1	:	Nevada N MC 178926 and
IBLA 81-235	:	N MC 175286 thru N MC 175190,
	:	inclusive
JAMES B. PAULEY	:	
	:	
	:	Mining Claim Recordation

ERRATUM

On February 26, 1981, this Board decided the appeal in the matter in caption. James B. Pauley, 53 IBLA 1. In that decision an error occurred wherein it was stated that the Valley View and Valley View Nos. I thru V mining claims were located on August 26, 1980, and recorded with the Nevada State Office, Bureau of Land Management (BLM) on December 1, 1980, thereby rendering all of the claims null and void as required by §314 Federal Land Policy and Management Act (1976) (FLPMA), 43 U.S.C. §1744 (1976), and 43 CFR 3833.4.

The Valley View Nos. I thru V were located between September 5 and 15, 1980, and properly recorded with BLM within 90 days of location as required by FLPMA, supra and the implementing regulation 43 CFR 3833.1-2(b).

Accordingly, the Board's decision as to the Valley View Mining Claim (N MC 178926) is affirmed. The reference in the decision to the Valley View Nos. I thru V (N MC 175186 thru 175190) is hereby deleted, and the decision amended accordingly.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski Anne Poindexter Lewis
Administrative Judge

Administrative Judge

